ment of their rights to the recognized principles of international law and the submission of their case to the public opinion of the society of states. The remedy lies in one direction only. When the Latin-American states raise the standard of their judicial organization so that the courts will perform their international duty as measured by the standard of international law, the continued diplomatic pressure of foreign claims will cease. Until the administration of justice in these states itself induces that confidence which will relieve them from burdensome diplomatic claims, foreign governments will no more than heretofore consider themselves hampered by the provisions of local legislation or by the renunciation of protection by the contract of their subject.

The CHAIRMAN. We now pass to the second phase of the discussion of the general subject of *The Basis of Protection to Citizens Residing Abroad,* which is:

*The citizenship of individuals, or of artificial persons (such as corporations, partnerships, and so forth) for whom protection is invoked.*

I now have the pleasure of introducing to the Society Professor Raleigh C. Minor, of Virginia.

ADDRESS OF PROF. RALEIGH C. MINOR, OF THE UNIVERSITY OF VIRGINIA,

ON

*The citizenship of individuals, or of artificial persons (such as corporations, partnerships, and so forth) for whom protections is invoked.*

Gentlemen of the American Society of International Law: I have been flattered by the invitation you have extended me to read this paper. Its demerits I beg you will ascribe, in part at least, to your own courtesy and kindness in affording me the opportunity and privilege of addressing this distinguished body.

In that fabulous state of nature, so glowingly depicted by some writers on the Theory of Government, when man roamed the world at will, subject to no restrictions save those imposed by his own

unquickened conscience or his neighbor's bludgeon, when the obligations of citizenship as well as the protection afforded by government were nascent or nonexistent, there were perhaps compensations that we, of a later age, do not fully appreciate. There were no taxes or millinery bills to pay, no elections, no windmills or trusts to overthrow, no political speeches or comic supplements of Sunday newspapers to read, nor discourses to be patiently heard by learned societies.

But this state of nature had its disadvantages also. True, pleasure and profit might be derived from robbing a weaker neighbor of his hard-earned hoard of chestnuts, huckleberries, fig-leaves, or whatever our semi-simian forbears were used to squander upon their tables and toilettes, but the pleasant pastime was subject to the inconvenient consequence that a stronger might perform the same friendly service for the robber, with none to stay his rapacious hand.

Nor, in the more probable early processes of mankind — the family and tribal stages — may we expect to find the correlative ideas of protection and citizenship highly developed.

So far as we can now discern from the dim records of an ancient past, the once powerful kingdoms of Babylon and Egypt arōse and sank to their setting, without developing fully these conceptions. Based as these governments were upon the selfishness and despotism of the rulers and the ignorance and weakness of the ruled, there was scant room for the growth of that mutual sense of moral obligation, whereby rulers are induced to regard themselves as trustees of power for the welfare and happiness of their people, and the people to look upon themselves as the support and mainstay of their government.

Upon such meat does patriotism feed. In proportion as a government selfishly pursues its own ends to the detriment of its people's interests, in like ratio will love of country and other civic virtues decline among the citizens. This is one of the great lessons taught in the rise and fall of the Roman Empire, and in the loosened ties of allegiance and protection so prominently featured in the history of Europe during the Middle Ages.

Out of the dark and dreary womb of that gloomy period the

European states emerged, struggling in the throes of a new birth, to be confronted with the great problems induced by the revival of learning, the invention of printing, and the discovery of America, to be followed in due time by those yearnings after freedom — moral, mental, and physical — destined to wade through slaughter to their culmination, causing the overthrow and execution of more than one monarch, and only reaching their fuller fruition in our own day.

These various influences are readily traceable in the origin and growth of international law, and perhaps at no point more clearly than in the doctrines of allegiance, citizenship, and the governmental protection due in return for allegiance. The despotic and tyrannical principle of indelible allegiance has now almost universally given place to the only doctrine tolerable to freemen — that of a reasonable right of expatriation whenever the interest or choice of the individual shall dictate such a course. We, of America, may be pardoned an emotion of pride that our own government should have taken so large a part in this reform.

Not only do modern states recognize the duty to protect their citizens at home against the rapacious hand of power, even the ill-directed power of government itself, but they recognize the equal duty to protect their people, when abroad, against the oppressive acts of foreign governments and officials. I wish to invite your attention, as briefly as I can, to the nature of that citizenship, to insure justice to the holders of which our government will advance, if need be, into the bloody jaws of war itself.

The protection thus afforded need not be, and is not, altogether confined to persons answering the strict definition of citizens, in the full sense of the word. For example, as we shall presently see, corporations incorporated in the United States, though not in strictness citizens, are protected by the government against foreign aggression, just as if they were actually citizens. Such persons may be conveniently termed *quasi-citizens*.

The citizen of the United States owes political allegiance to the country, and if he levies war against it or adheres to its enemies, giving them aid and comfort, he is guilty of treason. The *quasi-*

*citizen* owes no such political allegiance, and can not be guilty of treason.

Again, the constitutional provision, prohibiting any state of the Union "to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," applies only to persons who are strictly *citizens,* and not to the *quasi-citizens* just alluded to.

While, therefore, the citizen and the quasi-citizen may be equally entitled, by favor of government, to invoke its protection against the aggressions of foreign states, it does not follow that the government either intends or has the power to place them on an equal footing in all other respects.

Let us then first inquire, who are citizens of the United States in the strict sense of the word to whom attach all the burdens as well as the privileges of citizenship? — and, second, who are those quasi-citizens who, though entitled as against other nations to such protection as our government may think proper to accord, yet can not claim all the rights and privileges of citizenship, nor be burdened with all its obligations?

## I. *Citizenship of the United States.*

This subject must be discussed with reference to two distinct periods in our history, the first, from the inception of the Constitution to the passage of the Fourteenth Amendment in 1868; the second, from the passage of the Amendment to the present.

The original Constitution had conferred upon Congress the express power to "establish an uniform rule of naturalization," and had declared that "no person except a natural-born citizen * * * shall be eligible to the office of President." It had also, in defining the eligibility of Senators and Representatives in Congress, declared that they shall have been "citizens of the United States" for a prescribed period. Thus, the Constitution itself recognized that there was a classification of citizens into natural-born and naturalized, but it nowhere defined who should be deemed citizens.

Where then was the government to look for a definition? The natural answer, in view of our sysem of municipal law, was to con-

sult the common law of England, to which we had been subject as Colonies, and to modify that by such legislative acts of Congress as might be needful to adapt it to our conditions. At least this was what was actually done, and the right of Congress, under the original Constitution, thus to modify the common-law doctrine as it might see fit, has never been seriously questioned.

The rule of the common law is that citizenship turns upon the place of birth, and that one born within the jurisdiction, even though of alien parents, is a citizen by birth, or, as the Constitution expresses it, a natural-born citizen; and this rule has been very generally recognized and enforced by all the departments of the government. *United States* v. *Wong Kim Ark,* 169 U. S. 655 *et seq.; Lynch* v. *Clarke,* 1 Sandf. Ch. (N. Y.) 583; 9 *Ops. Atty.-Gen.* 373; 10 *Id.* 382, 394.

But Congress thought proper to extend this definition, and as early as 1790 enacted that "the children of citizens of the United States, that may be born beyond the sea or out of the limits of the United States, shall be considered as natural-born citizens." 1 *Stat. at L.* 104. This act, however, was substituted in 1795 by another, in which the words "natural-born citizens" are replaced by the single word "citizens" — a change retained in the act of 1802 and in the act of 1855, which is the one now found on the statute books (*U. S. Rev. Stats.,* § 1993, *U. S. Comp. Stats.,* p. 1268) indicating the legislative intent to recede from the position that such persons are to be classed as natural-born, and to constitute them naturalized, citizens, and they are so classed by the Supreme Court in *United States* v. *Wong Kim Ark,* 169 U. S. 687, 688, 702–703. The question is one of practical interest since, under the Constitution, only a natural-born citizen can aspire to be President of the United States.

Furthermore, Congress, in the exercise of its constitutional power to establish an uniform rule of naturalization, enacted a general naturalization law in 1790, since frequently amended, providing that any alien, being a free white person, might be naturalized, and prescribing the procedure by which this result might be accomplished. *U. S. Rev. Stats.,* § 2165 *et seq., U. S. Comp. Stats., p.* 1329 *et seq.*

Another rule adopted by Congress is that the infant children, dwelling here, of duly naturalized aliens, shall be deemed citizens. *U. S. Rev. Stats.*, § 2172, *U. S. Comp. Stats.*, p. 1334.

Prior to 1855 an alien woman, marrying a citizen of the United States, did not by virtue of the marriage become a citizen, but remained an alien unless naturalized under the general laws. *Shanks* v. *Dupont*, 3 Pet. 242. But by the act of Congress of that year, with its later amendments, such a wife shall be deemed a citizen, provided she might herself be lawfully naturalized, that is, provided she were free white or (later) of African nativity or descent. *U. S. Rev. Stats.*, § 1994, *U. S. Comp. Stats.*, p. 1268; *Kelly* v. *Owen*, 7 Wall. 496; *Broadis* v. *Broadis*, 86 Fed. 951; *Kane* v. *McCarthy*, 63 N. C. 299.

Still another mode of naturalization may occur upon the admission by Congress of a new State into the Union, whereby in general all residents who have been permitted to share in the formation of the new State become citizens of the United States, even though they be aliens who have never complied with the general naturalization laws. *Boyd* v. *Nebraska*, 143 U. S. 135.

One other mode of naturalization may be mentioned, peculiar because of the fact that it is not the result of acts of Congress, but is accomplished under the treaty power, vested in the President and Senate. When, by treaty of peace or of cession, certain territory has come under the jurisdiction of the United States, the inhabitants of that territory are usually by treaty stipulation made citizens *ipso facto*.[1]

This is a brief summary of the modes whereby citizenship of the United States might have been created prior to the passage of the Fourteenth Amendment. It will be noted that during this period Congress exercised, as an unquestioned right, the power of defining

[1] A prominent exception to this general rule is found in the treaty of peace of 1898 between Spain and the United States, applicable to the residents of Porto Rico and the Philippine Islands, wherein it is provided that Spanish subjects, natives of Spain and resident in the islands, might retain their allegiance to Spain. (See Insular Cases, 182 U. S. 1. But this does not include Spanish corporations, organized prior to the cession, and doing business in the islands. Martinez v. Associacion de Senoras, 213 U. S. 20.)

who should be citizens, in the absence of any definition of the term in the Constitution itself; or, perhaps, it would be more accurate to say that in none of the cases in which Congress undertook to determine who should be citizens was its power to pass the particular acts questioned.

We now come to consider what changes, if any, have been wrought in this Congressional power by the Fourteenth Amendment of 1868. Its importance in this discussion is due to the fact that it defines, as the original Constitution did not, who shall be citizens, both of the United States and of the States, declaring that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

This is not the occasion to consider the causes leading to the adoption of this clause of the Amendment. Suffice it to say that the public mind had been greatly disturbed over the question, who were, and who were not, citizens of the United States and of the several States, not only in relation to the lately emancipated negroes, but also with respect to the inhabitants of the District of Columbia and the territories, as well as others whose status under the original Constitution was doubtful.

This constitutional provision evidently accomplishes one of two things. It either sets forth a clear and comprehensive definition of citizenship, furnishing the sole criterion in all future cases by which the citizen of the United States and also the citizen of the State is to be measured, anything in any act of Congress or State law or constitution to the contrary notwithstanding, which is the view expressed in a *dictum* of the Supreme Court in the *Slaughter-House Cases,* 16 Wall. 72–73; or else it is to be regarded merely as a constitutional declaration that certain persons shall be citizens of the United States and of the States wherein they reside, without intending to deny to Congress or to the States the rights previously possessed to determine citizenship in other cases for themselves, as they might see fit. The latter view, in part at least, is also supported by *dicta* of the Supreme Court in the case of *United States* v. *Wong Kim Ark,* 169 U. S. 676, 687–688.

I do not purpose to discuss here the relative merits of these two views of the scope of the Amendment, but assuming that announced in the *Slaughter-House Cases, supra,* to be correct, and that the Amendment contains a complete definition of citizenship of the United States, and also of the States, which neither Congress, nor any other department of the government, nor a State, is competent either to enlarge or restrict, I shall consider the effect this view would have upon the various cases already mentioned, whereof citizenship of the United States might have been predicated prior to the Amendment.

It will be observed that the definition, if such it be, preserves the classification into natural-born and naturalized citizens, demanding of the natural-born that he be born in the United States, and of both that they be subject to the jurisdiction thereof.

Two conditions are required for the natural-born citizen: (1) that he be born in the United States; and (2) that he be subject to the jurisdiction thereof. The first of these is a mere question of fact, of which nothing need be observed save that it is provable like any other fact, and that it forever lays to rest the contention that a child born in a foreign country of American parents may be deemed a natural-born citizen. See *United States* v. *Wong Kim Ark,* 169 U. S. 687, 688, 702–703. But the second condition, that he be subject to the jurisdiction, involves some delicate and important points of international law and constitutional construction.

The phrase, " subject to the jurisdiction," may refer to the obligation of political allegiance, or it may refer to the duty of obedience to the country's laws, or both.

Under any interpretation of the phrase, it is clear that a child born in the United States, whose parents are citizens of this country, is subject to the jurisdiction, and therefore answers every requirement of a natural-born citizen. *Minor* v. *Happersett,* 21 Wall. 162, 166–168.

On the other hand, under the fiction of extraterritoriality, as recognized by international law, it is equally manifest that a child, though born ostensibly in the United States, if he be born in a foreign legation of parents belonging to the embassy, or on a foreign

public vessel, or of alien enemies in hostile occupation of American soil, is not subject to the jurisdiction of this country in either sense of the term. Neither parents nor child owe to this government political allegiance nor the general duty to obey its laws, and hence the child does not answer the constitutional definition of a citizen of the United States. *United States* v. *Wong Kim Ark,* 169 U. S. 682 *et seq.*

Again, the relations of members of the Indian tribes to the federal government are such that they can not properly be said to be subject to its jurisdiction. Though actually situate within the limits of the United States, the Indian tribes occupy the position of alien, though dependent, nations, with whom the government is competent to make treaties, and who, while compelled to keep the peace, are in the main subject to their own tribal laws and customs. A child of Indian parents in tribal relations, though born in the United States, is not subject to the jurisdiction, and hence is not a natural-born citizen. *Elk* v. *Wilkins,* 112 U. S. 99–103.

But what shall we do with the child born in this country of alien parents domiciled here, or, still worse for our peace of mind, of aliens here temporarily only? The political allegiance of these strangers, especially the latter, is in the main due to their own country, not to ours, and their obligations to this country are for the most part fully discharged if they render obedience to its laws. Does this constitute them "subject to the jurisdiction" so far as to cause their children, born on American soil, to be deemed natural-born citizens of the United States?

In the case of the child born here of aliens domiciled in this country, the Supreme Court has decided that he is a citizen, even though the parents, after his birth, take him back to their native country. In *United States* v. *Wong Kim Ark,* 169 U. S. 649, a child, born here of domiciled Chinese parents, was held a citizen, and as such entitled to enter the United States from China, despite the Chinese Exclusion Act.

And perhaps, since this decision seems to turn on the point that the phrase, "subject to the jurisdiction," refers only to the duty of obedience to the laws, not to political allegiance, the same ruling

should be made in case of children born in this country of aliens here temporarily only, for these owe a similar obedience to its laws, while here, as do their domiciled brethren. Prior to the Fourteenth Amendment it had been expressly so decided in New York, independently of any statute. *Lynch* v. *Clarke,* 1 Sandf. Ch. 583. See *United States* v. *Wong Kim Ark,* 169 U. S. 693, *affirming* 71 Fed. 382; *United States* v. *Look Tin Sing,* 21 Fed. 905.

As has been said, Congress in 1790 took the position and expressly enacted that foreign-born children of American parents were natural-born citizens. 1 *Stats. at L.* 104. But if our assumption be correct, that the function of this clause of the Fourteenth Amendment is to give a complete definition of citizenship, so that Congress has no power to extend its provisions, it would seem that such an enactment, if now on the statute books, would be beyond the powers of Congress. Indeed, Congress itself seems to have entertained doubts of the propriety of constituting such persons natural-born citizens, for within five years after its passage the language of the act was altered so that such persons were declared "citizens," but were no longer designated "natural-born citizens." But if not the latter, they must have been deemed naturalized citizens. *United States* v. *Wong Kim Ark,* 169 U. S. 687, 688, 702–703.

This brings us to consider the effect of the constitutional definition of citizenship upon the congressional power of naturalization.

The Fourteenth Amendment, so far as it refers to naturalized citizens, provides that "All persons * * * naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of the United States * * *." It is to be especially noted that the requirement that the person shall be "subject to the jurisdiction" applies equally to naturalized, and to natural-born, citizens.

What then becomes of the citizenship of the foreign-born child of American parents?

The present act of Congress dealing with this situation was passed in 1855, prior to the Fourteenth Amendment, and reads as follows:

"All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citi-

zens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States." *U. S. Rev. Stats.*, § 1993, *U. S. Comp. Stats.*, p. 1268. And this is re-enforced by another act providing that "the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof." *U. S. Rev. Stats.*, § 2172, *U. S. Comp. Stats.*, p. 1334.

If citizens at all these persons can not be natural-born, because not born in the United States, and must therefore be classed as naturalized citizens. But the constitutional definition of citizenship contained in the Fourteenth Amendment is just as stringent in demanding that naturalized, as that natural-born, citizens be "subject to the jurisdiction of the United States."

In respect of children born in this country of alien parents domiciled here, we have already seen that the phrase "subject to the jurisdiction" has been construed as referring to the obligation to obey our laws, and not to political allegiance. Are we now, with respect to these foreign-born children of Americans, to reverse our position and declare that the phrase refers to political allegiance, and not to subjection to local laws; and, if so, is it not begging the question to declare that such foreign-born children owe any allegiance to this country? That would be to reason in a circle, for that is the very question involved in the determination of their citizenship.

Upon the assumption that the Fourteenth Amendment does not merely confer citizenship upon a given class of persons, as seems to be maintained in *United States* v. *Wong Kim Ark*, 169 U. S. 687, 688, 702–703, but creates a clear, complete, and comprehensive definition of citizenship, as is declared in the *Slaughter-House Cases*, 16 Wall. 72–73, I submit, with diffidence, that Congress can not now by any form of act declare such children naturalized citizens unless, by presence in this country or otherwise, they have become subject to the jurisdiction of the United States.

Especially is it difficult to conceive how Congress can effect their naturalization by the particular acts above quoted, for in both acts it is expressly declared that the beneficiaries thereof are children

born *out of the jurisdiction* of the United States. We are then confronted with this dilemma: either the ordinary foreign-born child of American parentage, who has never returned to this country, is subject to the jurisdiction of the United States, in which case he is not "out of the jurisdiction," and hence the acts of Congress do not apply to him; or else, he is out of the jurisdiction, in which event, though he falls within the terms of those acts, the acts themselves would constitute an enlargement of the definition of citizenship, as announced in the Fourteenth Amendment, and would exceed the powers of Congress.

Another instance wherein Congress may have overstepped its powers in declaring persons to be citizens of the United States in the complete, constitutional sense, is to be found in the act of 1855, which, as it now appears, reads as follows: "Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen." *U. S. Rev. Stats.*, § 1994, *U. S. Comp. Stats.*, p. 1268.

This mode of naturalization complies fully with the conditions of the Amendment, provided the lady be domiciled here, or perhaps even here temporarily, at the time of the marriage, for in such case she is subject to the jurisdiction of the United States in the sense that she is subject to its laws. *United States* v. *Wong Kim Ark*, 169 U. S. 693, *affirming* 71 Fed. 382; *United States* v. *Look Tin Sing*, 21 Fed. 905.

It has been decided that it is the status of marriage, not the act of marriage, that confers citizenship on the alien wife, so that, even though the husband also be an alien at the date of the marriage, his subsequent naturalization makes her a citizen too. *Kelly* v. *Owen*, 7 Wall. 496; *Kane* v. *McCarthy*, 63 N. C. 299, 304. Hence it may be asserted with some confidence that though the alien-wife may never have been in the United States at the time of the marriage, should she afterwards during the continuance of the marriage status come hither to reside, her citizenship would begin from the moment she thus becomes subject to the jurisdiction — and perhaps even though she come after her husband's death. *Headman* v. *Rose*, 63 Ga. 458.

But if we take the case of an alien woman, married abroad to an American citizen, and assume that she remain abroad continuously, it may well be doubted whether she can be regarded as subject to the jurisdiction of the United States in any sense. If not, she does not comply with the constitutional definition, and can not be a citizen, notwithstanding the act of Congress. At least, if she would make sure of American citizenship, it would be advisable that she sojourn in the United States for a time; or perhaps she might accomplish the same result by celebrating the nuptials in an American legation.

There are several decisions which appear at first glance to contravene these conclusions, but a closer inspection shows either that the case arose before the ratification of the Fourteenth Amendment or that the wife had at some time after the marriage come within the limits and jurisdiction of the United States. See *Kane* v. *McCarthy,* 63 N. C. 299; *Headman* v. *Rose,* 63 Ga. 458; *Ware* v. *Wisner,* 50 Fed. 310; 14 *Ops. Atty.-Gen.* 402.

On the other hand, our position upon this point has been sustained by no less an authority than Secretary Olney, who expressed the opinion that the naturalization of a Turkish subject did not operate to naturalize his wife who had never been in this country. *Sen. Doc. No. 83, 1st Session, 54th Congress.*

In the other cases of naturalization before mentioned, such as the case of infant children, dwelling here, born abroad of naturalized parents, or the collective naturalization of persons inhabiting territory ceded by treaty, or inhabiting a territory of the United States erected by Congress into a new state — in all of these cases the persons are already subject to the jurisdiction of the United States, and the questions above suggested do not present themselves.

Even in the cases where they do present themselves — the cases of foreign-born children of American parents and the alien wives of Americans married abroad — and assuming the soundness of our conclusion that Congress has no power to declare them complete citizens in all respects — it does not follow that they are to be deprived of the protection of our government. They may, and, in view of the acts of Congress before referred to, doubtless should, be regarded as belonging to the class of *quasi-citizens,* to which I shall now very briefly invite your attention.

## II. *Quasi-Citizenship of the United States.*

For the sake of convenience I have selected the term *quasi-citizen* as appropriate to designate those persons who, while not enjoying the franchise of citizenship in its full constitutional sense, yet may be the objects of the country's solicitude and protection when their personal or property rights are menaced by alien governments.

To this class, if conclusions before reached are sound, belongs the foreign-born child of American parents who has never become subject to the jurisdiction of the United States, or in like case the alien woman who has married an American.

Another example of this class is a partnership whose interests are imperiled by foreign aggression.

If all the partners are citizens of the United States, their status attaches to the partnership itself, at least to the extent of constituting it a quasi-citizen, whose rights will be protected by the government. The records of international claims commissions to which our government has been a party, as well as the records of the State Department, contain many cases wherein the claims of American firms have been settled on the basis of such connections with the United States.

But if some of the partners are citizens of other countries, the interests of the partners are regarded as separable, whether the partnership itself have its chief place of business in this country or elsewhere, and the rights of our citizens alone will be protected by the government, the alien partners being left to shift for themselves or to demand the intervention of their own governments.

As was said by the international claims commission in passing upon the case of Thomas Morrison, Surviving Partner of Plumer & Morrison, 3 Moore, Int. Arb., p. 2325:

The right of the citizen to claim the protection of his own government against the wrongful acts of a foreign government is a personal right, confined to the citizen injured, and can not be by him extended or transferred. He can not, by connecting himself with the citizens of another country in his business relations, throw over them the mantle of his own government or enable them to invoke its protection. If the government of a country in which a citizen of the

United States is temporarily domiciled destroys property owned jointly by such citizens and by foreigners, the United States, by the law of nations, can demand indemnity only for the injury to its own citizens, and the measure of the indemnity would be the extent of the interest of such citizen in the property destroyed.

See also the case of *Hargous & Voss,* 3 Moore, Int. Arb., p. 2327, 6 Moore, Dig. Int. Law, 641.

The last instance of quasi-citizenship is that of American corporations engaged in foreign trade or business. These, whether incorporated by the United States or by one of the States of the Union, are uniformly regarded as entitled to the government's protection. Indeed it is now customary to include in all claims conventions the provision that the submission or settlement shall embrace " all claims on the part of corporations, companies or private individuals, citizens of " . . . the particular country. 6 Moore, Int. Law Dig. 641–643; 3 *Id.* 800 *et seq.*

In these cases it is established that the citizenship of the stockholders is immaterial. They may even all be aliens, but if the company be incorporated in the United States, it is a quasi-citizen, and entitled to our government's protection. The stock to-day owned by aliens may to-morrow be in the hands of citizens, or *vice versa,* and to hold the citizenship of the corporation to depend upon that of the stockholders, or a majority of them, would be to shift the corporation's citizenship from day to day, and to create inextricable confusion. 3 Moore, Int. Law Dig. 800 *et seq.;* 6 *Id.* 644 *et seq.*

*E converso,* the fact that American citizens or corporations hold some, or even the whole, of the stock of a company incorporated abroad does not entitle them to demand the intervention of the United States to protect the corporation itself against oppressive acts of foreign governments, for as shareholders they have no individual property in the chattels or credits of the corporation. 3 Moore, Int. Law Dig. 803; 6 *Id.* 644 *et seq.*

It is otherwise, however, if the acts of the foreign government are directed, not against the property of the corporation, but against the stock itself held by American stockholders, as, for example, governmental acts whereby such stock is unjustifiably confiscated.

Americans shall not then invoke the aid of their government in vain. 6 Moore, Int. Law Dig. 644 *et seq.*

[At this point Hon. John W. Foster, one of the vice-presidents of the Society, took the chair.]

The CHAIRMAN. We have just listened to two very interesting papers, one by Professor Scott and the other by Mr. Borchardt, on the question of the limitation of protection by contract between the citizen and a foreign government, or by municipal legislation, and also to the paper just read by Professor Minor on citizenship in the United States. These subjects are now open for general discussion and comment on the papers read and on the general subject. I hope there will be no hesitation on the part of the members of the Society in taking part in this discussion.

As there seems to be a reluctance to begin the discussion, I will try to reach some of the modest men by personal appeal. We are honored by the presence among us of a number of the distinguished educators of the country, among whom none is more distinguished than the president of the University of Chicago, Professor Judson, and if he can not discuss this question, I know he can tell us something that will be of interest to us. We will be glad to hear from Professor Judson, and we will then expect some of the rest of you to take up this subject for discussion.

Professor JUDSON. Mr. President and Gentlemen: I had not the slightest idea of discussing this very interesting subject which has been so ably dealt with in the papers you have listened to. I heartily indorse what the President has said to you, and I am glad the Society has been organized. I am glad to do my part in making it as successful as it should be.

The papers which have been presented yesterday and to-day could not adequately be discussed off-hand by any man; but two or three points occur to me in connection with the general subject.

The title so happily selected by one of the speakers, "Quasi-Citizens," and its application to corporations, is an interesting one.

Corporations are, of course, artificial persons, created by and subject to the law. Being subject to the law, they are also entitled to protection. Does not essentially the same condition apply to the Indian tribal relations? They are subject to the laws of the United

States and entitled to the protection of them. The citizens of Porto Rico and the inhabitants of the Philippine Islands owe allegiance to the United States and obedience to its laws. They are subject to its jurisdiction and entitled to its protection; and yet none of them are citizens, in the full sense of the word.

So that our law now knows these different classes which might be known as, first, those who are citizens, and secondly, those who owe allegiance to and are entitled to the protection to which citizens are entitled.

So far as the Fourteenth Amendment to the Constitution is concerned, in the absence of a final, conclusive, and adequate definition by the Supreme Court of the United States, it seems to me that the Amendment does not exhaust the powers of Congress on that subject and is not a comprehensive definition. It does enumerate certain classes of persons who are citizens; but not all those persons. There are other matters of the same kind which seem to me to bear on this question; but I do not wish to take up the time of the Society in discussing them.

I now wish to express to you the great interest I have had in listening to these papers, and to congratulate the Society upon the fact that there is growing up among us to-day a body of young men who are interested in this subject. I apply that term to the speakers who have preceded me, because when I was a lad in college the gentlemen who were interested in international law were uniformly gentlemen who were ripe in years with gray hair, and not much of it.

The CHAIRMAN. The report of the Committee on Nominations will now be in order.

REPORT OF THE COMMITTEE ON NOMINATIONS

Mr. BUTLER. Mr. Chairman: On behalf of the Committee on Nominations appointed by the Executive Council, I make the following report:

WASHINGTON, D. C., *April 29, 1910.*

To the

AMERICAN SOCIETY OF INTERNATIONAL LAW:

Your Committee on Nominations has the honor to report the following nominations:

*For Honorary President*

Hon. William H. Taft

*For President*

Hon. Elihu Root

*For Vice-Presidents*

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|---|---|
| Chief Justice Fuller | Hon. John W. Griggs |
| Justice William R. Day | Hon. William W. Morrow |
| Hon. P. C. Knox | Hon. Richard Olney |
| Hon. Andrew Carnegie | Hon. Horace Porter |
| Hon. Joseph H. Choate | Hon. Oscar S. Straus |
| Hon. John W. Foster | Hon. Shelby M. Cullom |
| Hon. George Gray | Hon. Jacob M. Dickinson |

*For the Executive Council to serve until 1913:*

Hon. James B. Angell, Michigan
Hon. Augustus O. Bacon, Georgia
Hon. Frank C. Partridge, Vermont
Prof. Leo S. Rowe, Pennsylvania
F. R. Coudert, Esq., New York
Everett P. Wheeler, Esq., New York
Hon. Edwin Denby, Michigan
Alpheus H. Snow, Esq., District of Columbia

*To fill the vacancy in the Executive Council to serve until 1912, to succeed Hon. Jacob M. Dickinson:*

Mr. Jackson H. Ralston of the District of Columbia.

Respectfully submitted,

C. H. Butler, *Chairman,*
Geo. B. Davis
(Signed) J. F. Colby
Chas. C. Hyde
Walter S. Penfield

The Chairman. You have heard the report of the Committee, and in the absence of objection it will be accepted. The election will take place at the meeting of the Society to-morrow.

We have with us Mr. Marburg, of Baltimore, and I am sure all of those present will be very glad to hear from him.

Mr. BUTLER. May I, before the proceedings continue, call attention to the fact that the memorial services of the Supreme Court in memory of our late vice-president, Mr. Justice Brewer, whose death we so much deplore, will take place to-morrow in the Supreme Court, at 12 o'clock.

The CHAIRMAN. You have heard the announcement. As adequate accommodations as possible will be afforded at the Clerk's office of the Supreme Court to-morrow for the purpose of enabling you to attend those services.

Mr. MARBURG. Mr. Chairman, I feel very much complimented at being called upon to address the Society; but I have given so little thought to this special topic that I feel I can not contribute anything of value, and I ask to be excused.

The CHAIRMAN. Mr. William C. Dennis, of the State Department, is here and we would like to hear a word from him on the subject under discussion this evening.

Mr. DENNIS. I have been very glad indeed to be here this afternoon; but inasmuch as some of the questions which are being discussed are matters which I will have to work with officially, I think it is better for me to come and listen and learn, rather than to attempt to say anything. It has been a very great pleasure for me to be here and listen to these discussions.

The CHAIRMAN. As there is no further discussion, and the hour of adjournment has arrived, I announce that the next meeting of the Society will be called at 8 o'clock this evening.

The Society thereupon adjourned until 8 o'clock p. m., April 29, 1910.

## EVENING SESSION

(Friday, April 29, 1910)

The Society was called to order at 8 o'clock p. m. In the absence of the president, Hon. George Gray, one of the vice-presidents, presided.